IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.860 OF 2001.

Chima Sakru Wagh,]
Age 33, Convict Prisoner]
No.C/11208, Yerwada Central]
Prison, Pune 411 006] Appellant.

versus.

The State of Maharashtra] Respondent.

Ms.S.Suryawanshi, advocate appointed, for the appellant.
Mr.A.M.Shringarpure, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 30th July 2004.

ORAL ORDER

1. This appeal is filed by the accused against his conviction. He is accused No.1. Other accused Nos. 2 to 6 were acquitted by the

trial Court. Appeal was filed through jail. Advocate Ms.Suryawanshi was appointed to represent the accused. I heard her and the learned APP for the State.

2. The accused has been convicted under Sections 395, and 397 r/w 34 of the Indian Penal Code and sentenced to suffer R.I. for nine years to pay a fine of Rs.3000/- in default to suffer R.I. for one month. He is also convicted under Section 353 r/w 34 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/- in default to suffer R.I. for ten days. The substantive sentences to run concurrently. The accused/appellant is in jail since 30th August 1999.

3. It was the case of the prosecution that PSI Shewale was on patrolling duty in the night intervening 29.8.1999 and 30.8.1999 on Bombay to Agra National Highway between Vashind to Kasara. He was accompanying by PHC Gangurde, PC Dongre and PC Patil. At about 11 p.m. one lorry driver informed him that near Aatgaon incident like dacoity was going on towards Nasik side of Aatgaon on Bombay to Agra National Highway.

Therefore, this police party went to Aatgoan Railway Station; kept their jeep there; took RPF Shri Jadhav and one more RPF from Aatgaon Railway station and proceeded towards Nasik side by rail track on foot. The national highway known as Bombay to Agra situated parallel to the rail track and towards Nasik side from Aatgaon railway station and at a particular junction both the railway and the road meet. The police party thereafter noted that a lorry facing towards Bombay was stationary on the road. It was obstructed by 5-6 persons by laying across the road iron pipe and the persons who obstructed the lorry were assaulting the lorry cleaner and committing robbery. They were armed with weapons like stick, sickle, axe and iron rods. This police party of PSI Shewale tried to apprehend them. However, the persons indulging in robbery started throwing the stones, due to which PSI Shewale and PC Dongre got injuries. Therefore, in order to over come robberers PSI Shewale fired two rounds from his service revolver and PC Dongre fired one round from his rifle. Therefore, those thieves started running and this present accused was caught on the spot by them.

4. Thereafter it was found that the mouth of the lorry cleaner was bleeding and, he told on inquiry that he was assaulted with but end of the axe and he was robbed of Rs.700/-. Search was made for other thieves but without vein. On the same night intervening between 29/08/1999 and 30/08/1999 PSI Shewale gave a complaint at Shahapur Police Station. Offence was registered. Charge sheet against five persons was submitted. Remaining accused were shown as absconding. Accused No.6 was arrested in the course of time and there supplementary charge sheet was submitted and the case of accused No.6 with the case of Accused Nos. 1 to 5 was amalgamated.

5. The prosecution examined PSI Appasaheb Shewale at Exhibit 24; PHC Bhika Gangurde at Exhibit 31; PC Dhananjay Patil at Exhibit 36 and PC Shankar Dhone at Exhibit 37. Their evidence was consistent through out and corroborating each other. They proved as to how they received information; how they went to the spot; why they had to fire rounds; how they suffered injuries and how accused No.1 was caught on the spot and other were absconding. In real sense of terms, there was no challenge to their testimony.

One iron pipe of 20’ in legth and 2" in diameter was found lying on the road. This fact was supported by panchanama Exhibit 19. One axe, one sickle and one kinfe were found lying in the shrubs, bushes and grass. They were recovered. Panchanama was proved so also the recovery of articles.

6. Counsel for the accused contended that there was no evidence of identification so far as this accused is concerned. There is no substance in this submission. There is no question of identifying the accused because he was caught on the spot and taken into cusstody on the spot and before the FIR could be lodged. All three police witnesses who were the members of the raiding party and who were on patrolling duty have supported the prosecution case fully. Nothing is brought on record to doubt their credibility. The weapons used in the robbery were seized. It may be that there is no evidence against other accused. But the trial Court has rightly acquitted them for want of evidence of identification. But so far as this accused is concerned, there is strong corroborative evidence from all the prosecution witnesses about his

involvement in the robbery. A perusal of cross examination of P.W.1 PSI Shewale clearly shows that accused could not shake his credibility nor could they dislodged him from his testimony in the examination-in-chief. There are no contradictions nor any omission is there. Only suggestions that it is a false case were put to him. All of them were denied by him. Therefore, this is a case that conviction can be based on only on the testimony of PSI Shewale. It is altogether different that he is strongly supported by other witnesses. There is, therefore, no merit in this appeal; nor any reason to reduce the sentence looking to the hineous nature of the crime, increasting highway robberies are concerned. Hence, the appeal is dismissed.

[D.G.DESHPANDE]

30/07/2004 JUDGE.